

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HYPHY MUSIC, INC.,

Plaintiff,

v.

FEDRICO CRUZ, an individual and dba
CRUZ PROMOTIONS; JOSE LUIS
POSADAS ROMANO, LUIS
EDUARADO ROA HERNANDEZ,
JORGE ESPITIA HERNANDEZ,
ALONSO ESTRADA, and VICTOR
CHAGOYA, all individuals,

Defendants

AND RELATED COUNTERCLAIMS
AND THIRD-PARTY CLAIMS

Case No. 1:23-cv-00700-JLT-HBK

ORDER GRANTING PLAINTIFF'S MOTION
FOR LEAVE TO ACCEPT
UNINTENTIONALLY DELAYED RESPONSE
TO THIRD-PARTY COMPLAINT

(Doc. No. 54)

Pending before this Court is Plaintiff HYPHY MUSIC INC.'s Motion for Leave to Accept Unintentionally Delayed Response to Third-Party Complaint filed May 10, 2023. (Doc. No. 54, "Motion"). Plaintiff concurrently filed with the Motion its Response to the Third-Party Complaint—a Motion to Dismiss Third-Party Plaintiff Julian Tapia Sena DBA Digital Musica World's Third-Party Complaint. (Doc. No. 55, "MTD"). Pursuant to Fed. R. Civ. P. 6(b)(1)(B), Plaintiff seeks permission to file his accompanied MTD due to counsel's inadvertent neglect in calendaring the response date. (Doc. No. 54 at 2). In response, Defendants and Counterclaimants

1 FEDERICO CRUZ dba CRUZ PROMOTIONS, JOSE LUIS POSADAS ROMANO, LUIS
2 EDUARDO ROA HERNANDEZ, JORGE ESPITIA HERNANDEZ, ALONSO ESTRADA,
3 VICTOR CHAGOYA and Third-Party Plaintiff JULIAN TAPIA SENA (collectively,
4 “Defendants”) filed a non-opposition. (Doc. No. 58). Defendants state that Plaintiff need not
5 have filed the instant Motion and MTD because, had Plaintiff met and conferred with Defendants,
6 they would have stipulated and continued Plaintiff’s deadline to respond. (*Id.* at 2).
7 Consequently, although Defendants have no opposition, they request that the Court “admonish
8 Plaintiff for its rush to judgment increasing the litigation, and for its failure to meet and confer
9 with the goal of avoiding unnecessary motions practice.” (*Id.* at 4:16-18).

10 Finding no opposition and a showing of good cause and excusable neglect by Plaintiff, the
11 Court grants Plaintiff’s Motion. Fed. R. Civ. P. 6(b)(1)(B). The Court now turns to Defendant’s
12 request that the Court admonish Plaintiff for its Motion.

13 This case was transferred to Court on May 5, 2023. (Doc. No. 51). Prior transfer, the
14 transferor court had already granted the parties’ first stipulation of time extending Plaintiff’s
15 response to the Third-Party Complaint until May 3. 2023. (Doc. No. 45). After transfer, Plaintiff
16 promptly filed the instant Motion. Notably, at the time Plaintiff filed the Motion, the case was set
17 before the Honorable Barbara A. McAuliffe because it had not yet been determined that this case
18 was related to Case No. 1:21-cv-216-JLT-HBK. *See Order Relating Cases and Reassigning*
19 *District Judge and Magistrate Judge*, which was issued on May 12, 2023 (Doc. No. 56). Further,
20 District Judge Thurston’s Standing Order that admittedly mandates a meet and confer
21 requirement prior to filing any motion, was not entered until May 15, 2023, after Plaintiff filed
22 the instant Motion. (Doc. No. 57). Finally, this Court’s Local Rule 144(a) permits the parties
23 only to stipulate to one twenty-eight (28) day extension to respond to a complaint, after which
24 court approval is required. Here, the parties had already been afforded a stipulated extension of
25 time by the transferor court. Thus, the Court finds no basis to “admonish” Plaintiff for exercising
26 diligence.

27 ACCORDINGLY, it is hereby ORDERED:

28 Plaintiff’s Motion for Leave to Accept Unintentionally Delayed Response to Third-Party

1 Complaint (Doc. No. 54) is GRANTED and Plaintiff's Motion to Dismiss Third-Party Plaintiff
2 Julian Tapia Sena DBA Digital Musica World's Third-Party Complaint. (Doc. No. 55) shall be
3 deemed timely filed.

4

5

Dated: January 18, 2024

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE